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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,836	08/30/2001	Holger Knaack	Beiersdorf 740-WCG	8547

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

MF

Office Action Summary	Application No.	Applicant(s)
	09/942,836	KNAACK ET AL.
	Examiner	Art Unit
	Gregory Pickett	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 August 2001.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 August 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4, 6</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. This Office action acknowledges applicant's preliminary amendment A, presented as Paper No. 5. Claims 1-8 are pending in the application.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "transparent film" of claim 6 and the "jar with a screw closure positioned thereon" of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because of the inclusion of legal phraseology. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The claims are objected to because they include reference characters, which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 3, 4, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the limitation "to the two side walls 12, 14 of the pack casing which are adjacent to the lid part" renders the claim indefinite since when the lid is closed, all four sidewalls are adjacent to the lid part. The use of reference characters is

to be considered as having no effect on the scope of the claims. See MPEP § 608.01(m).

Further regarding claim 2, the terms "said flaps" and "the flaps" renders the claim indefinite since multiple flaps have been previously defined. The use of reference characters is to be considered as having no effect on the scope of the claims. See MPEP § 608.01(m).

Claim 3 recites the limitation "supporting strip 423 and the second spacer crosspiece 424" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "in the case of the flaps 42, 44, the adhesive 425" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the flap 15" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Also regarding claim 8, the phrase "or some other suitable material" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or some other suitable material "), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Further regarding claim 8, applicant utilizes, in multiple places, the use of reference characters instead of terminology to define structure and locational relationships, rendering the claim indefinite. The use of reference characters is to be considered as having no effect on the scope of the claims. See MPEP § 608.01(m).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith (GB 853,891).

Regarding claim 1, Smith discloses in figures 1-3 a folding box having a rectangular pack casing (as shown, Figures 2 and 3), lid part (22), insertion flap (23), intermediate flaps (5, 6, 7, 8) articulated in the base region (as shown, Figures 1 and 2), on each of the four side walls (1, 2, 3, 4). Articulated interpreted as meaning, consisting of segments united by joints. Intermediate flaps (5, 6, 7, 8) are of the same height and are articulated on base flaps (9, 10, 11, 12), respectively. Base flap (9) is adhesively bonded to base flap (10) and base flap (11) is adhesively bonded to base flap (12) such that the base automatically closes as the box is erected (Page 1, Lines 76-85).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Stracke (DE 94 19 312.6).

Regarding claim 2, Smith discloses a box as applied to claim 1 above. Smith meets all limitations claimed by the applicant except:

Smith does not disclose articulated flaps located on the top portion of the second and fourth sidewall with four panels connected by three parallel fold lines.

Stracke discloses in Figure 1, articulated flaps (11) located on the top portion of the second (5) and fourth (4) sidewall with four panels connected by three parallel fold lines (as shown, Figure 1). The flaps of Stracke function as claimed by the applicant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the box of Smith with articulated flaps as taught by Stracke in order to provide a second top connection point for the article held, thereby making for a more secure connection.

As to claim 3, Stracke discloses second and third articulated panels with cutout (16) for accommodating the product.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Lo Duca (US 5,540,330).

Smith discloses a box as applied to claim 1. Smith meets all limitations claimed by the applicant except:

Smith does not disclose articulated flaps located on the top portion of the second and fourth sidewall with six panels connected by five parallel fold lines.

Lo Duca discloses a box (Figure 1, rotated 180°) with articulated flaps (9, 10) located on the top portion of the second (3) and fourth (1) sidewall with at least six panels connected by five parallel fold lines (as shown, Figure 1). The articulated flaps of Lo Duca are capable of folding as claimed by the applicant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the box of Smith with articulated flaps as taught by Lo Duca in order to provide a second top connection point for the article held, thereby making for a more secure connection.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Hobbs (US 2,979,250).

Smith discloses a box as applied to claim 1. Smith meets all limitations claimed by the applicant except:

Smith does not disclose at least two of the four sidewalls tapering slightly in the direction of the lid region.

Hobbs discloses a box (Figure 1) with sidewalls (9) tapering slightly towards the lid region. It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the box of Smith with tapered sidewalls as taught by Hobbs in order to provide for secure stacking of the boxes.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Stracke and Sparks (US 2,744,622).

Smith discloses a box as applied to claim 1. Smith meets all limitations claimed by the applicant except:

Smith does not disclose a front sidewall with a cutout that extends into the adjacent sidewalls, nor does Smith disclose a cutout with a transparent film covering the cutout.

Stracke discloses a box (Figure 1) with cutout (9) on front sidewall (3) extending into adjacent sidewalls (4, 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the box of Smith with a cutout as taught by Stracke in order to display the box contents to the consumer.

The box of Smith-Stracke does not disclose a transparent film covering the cutout. Sparks discloses a box (Figure 1) with a cutout having a transparent film (37) covering the cutout. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the box of Smith-Stracke with a transparent film covering as taught by Sparks in order to protect the contents from damage while allowing for viewing by the consumer.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

Smith discloses a box as applied to claim 1. Smith meets all limitations claimed by the applicant except:

Smith does not expressly disclose a box containing a jar with a screw closure positioned thereon.

Smith is capable of containing a large variety of objects of a cylindrical nature, which are to be held at their top and bottom. Jars with screw closures are typically cylindrical in nature. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place a jar with a screw closure into the box of Smith in the manner claimed by the applicant in order to securely transport a jar while preventing the spillage of its contents.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Hamilton (US 3,438,482).

Smith discloses a blank (Figure 1) with front sidewall (2), rear sidewall (4), right hand sidewall (3), left hand sidewall (1), base closure formed by closure tabs (9, 10, 11, 12), top closure formed by closure tabs (22, 24). The blank of Smith is formed of a suitable material. Sidewalls (1, 2, 3, 4) are joined by fold lines (as shown), and rear sidewall (4) is connected to lid part (22) by a fold line (as shown). Lid part (22) terminates in an insertion flap (23) via a fold line (as shown). Intermediate flap (8) and base flap (12) are connected to rear sidewall (4) via fold lines. Intermediate flap (7) and base flap (11) are connected to right hand sidewall (3) via fold lines. Intermediate flap (6) and base flap (10) are connected to front sidewall (2) via fold lines. Intermediate flap

(5) and base flap (9) are connected to left hand sidewall (1) via fold lines. The cutout claimed by the applicant is considered optional due to the term, "if appropriate". Smith meets all limitations claimed by the applicant except:

Smith does not disclose articulated flaps located on the top portions of right and left hand sidewalls consisting of five panels connected by four parallel fold lines.

Hamilton discloses a blank (Figure 1, rotated 180°) with articulated flaps (11) located on the top portions of the left and right sidewalls (3). Articulated flaps (11) are connected to right and left hand sidewall (3) by fold line (7) consists of first spacer (9), crosspiece (13), supporting strip (14), second spacer crosspiece (16), and adhesive flap (16), connected by fold lines (23, 24, 25, 26) arranged parallel to fold line (7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the box of Smith with articulated flaps as taught by Hamilton in order to provide a second top connection point for the article held, thereby making for a more secure connection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for

the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

gpr
Gregory Pickett
Examiner
February 6, 2003

Mickey Yu
Mickey Yu
Supervisory Patent Examiner
Group 3700